

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 896 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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ZAKIR HUSAN ABDUL MAJID                      SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 896 of 1997  
    MS RV ACHARYA for Petitioner No. 1  
    MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 24/07/2001

ORAL JUDGEMENT

The appellant accused has challenged in this appeal the judgement and order of conviction and sentence passed by the learned Additional Sessions Judge, Baroda in Atrocity Case No. 67 of 1997, whereby the learned

Judge found the appellant accused guilty for offence under Sections 436 and 506(2) IPC and sentenced to suffer five years RI for the offence under Section 436 and to pay fine of Rs. 250, in default to further undergo one month RI. He has also imposed sentence of 3 years RI for offence under Section 506(2) IPC and to pay a fine of Rs. 250, in default to further undergo one month SI. However, he acquitted the accused for the offence under Section 3(1)(10) of the Atrocities Act.

He has presented the appeal through jail. It appears from the record that during the pendency and final disposal of this appeal, the appellant accused presented Criminal Misc. Application No. 2501 of 1999 for bail in the above appeal. The same was rejected on 26.4.1999 by the learned Single Judge of this Court in absence of the learned Counsel for the appellant accused, after hearing the learned APP for the respondent State. However, his alternative prayer for fixing early date of hearing was granted.

Accordingly, this appeal was listed for final hearing and disposal on the running Board of 12th July, 2001 at Sr.No.8. Today, when the matter was called out, no one was present for the appellant accused. It was stated at the bar by learned APP Shri Gohil for the respondent State that Ms R.V. Acharya, who was earlier appearing for the appellant accused has now become AGP and therefore, she may not be in a position to appear for the appellant accused. In that view of the matter, I was required to either appoint any other Advocate to assist the Court or to call the appellant accused from jail for deciding the matter. However, this would have lengthen the proceedings and prima-facie I was of the opinion that the order of sentence as already undergone would serve the interest of justice and therefore, as held by the Hon'ble Supreme Court in case of Banising, reported in 1996 SCC (Cri.) 848, in absence of the learned Counsel for the appellant accused, this appeal is heard and decided with the aid and assistance of the learned APP Shri Gohil.

Having carefully gone through the evidence of the prosecution witnesses, it cannot be said that the learned Judge has committed any error in convicting the accused for the offence under section 436 and 506(2) IPC. However, having regard to the peculiar facts and circumstances of the case, I am of the considered opinion that ends of justice would be served by reducing the sentence of 5 years RI imposed by the trial Court for the offence under Section 436 and 3 years RI for the offence

under Section 506(2) IPC, which were ordered to run concurrently, by passing an order of sentence as already undergone.

In view of the above discussion, the impugned order of conviction passed by the trial Judge convicting the accused for the offence under Sections 436 and 506(2) IPC is confirmed. However, the substantive sentence of 5 years RI imposed for the offence under Section 436 IPC and 2 years RI for the offence under Section 506(2) IPC is reduced to the sentence as already undergone. However, the order of fine imposed by the trial Court is not interfered. If the accused has not paid up the fine so far, then he shall pay the same within one month, failing which he shall have to undergo sentence as imposed by the trial Court.

Accordingly, this appeal is partly allowed on the point of sentence only. If the appellant accused has already paid the amount of fine, and he is not required in any other case, then he may be set at liberty forthwith.

(B.J.Shethna, J.)

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